

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MICHAEL LATHER,	)	CASE NO. 3:08 CV 2842
	)	
Petitioner,	)	JUDGE SARA LIOI
	)	
v.	)	
	)	MEMORANDUM OF OPINION
KEITH SMITH,	)	AND ORDER
	)	
Respondent.	)	

On December 3, 2009, petitioner *pro se* Michael Lather filed the above-captioned habeas corpus action under 28 U.S.C. § 2254. Lather is incarcerated at the Mansfield Correctional Institution, having been convicted of trafficking in cocaine. The petition seeks to challenge a pending civil action in the Ohio Court of Common Pleas, concerning the potential forfeiture of a vehicle and monies allegedly connected with Lather's underlying conviction, on the ground that forfeiture of these items would constitute a violation of the Double Jeopardy Clause of the Fifth Amendment.

A federal district court may entertain a petition for a writ of habeas corpus by a person in state custody only on the ground that the custody violates the Constitution or laws of the

United States. Furthermore, the petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254.

There is no indication on the face of the petition that Lather seeks to raise an issue cognizable in habeas corpus, as “*in rem* civil forfeitures are neither ‘punishment’ nor criminal for the purposes of the Double Jeopardy Clause.” *United States v. Ursery*, 518 U.S. 267, 292 (1996); *cf. Melton v. Crosby*, 2005 WL 3434051 (M.D.Fla. Dec. 13, 2005)(counsel not ineffective for not challenging property seizure, because forfeiture not cognizable under 28 U.S.C. § 2254).

Accordingly, the request to proceed *in forma pauperis* is granted, the petition is denied, and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

**IT IS SO ORDERED.**

Dated: February 20, 2009

  
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**HONORABLE SARA LIOI**  
**UNITED STATES DISTRICT JUDGE**